

Consent Agenda

Agenda Item #	5A
Meeting Date	February 9, 2015
Prepared By	Jessie Carpenter City Clerk
Approved By	Suzanne R. Ludlow Acting City Manager

Discussion Item	Single Reading Ordinance Authorizing the Mayor to Execute a Contract for Municipal Legal Services (City Attorney).
Background	<p>The City of Takoma Park issued a request for proposals for municipal legal services (City Attorney) in September 2014. After evaluation of the proposals received and interviews with two firms, the City Council determined that the City will be best served by continuing its relationship with the law firm of Silber, Perlman, Sigman & Tilev, P.A. for the provision of legal services to the City as its City Attorney.</p> <p>A new contract has been prepared that sets forth the scope of work, contract term, arrangement for fees and expenses, and other agreed upon terms. The term of the contract is five years, with the option for renewal for up to five additional one-year extension terms.</p> <p>The contract calls for a base flat fee of \$12,000 per month from February 2015 through January 2017 for general legal services. The base hourly fee is \$175 from February 2015 through January 2017. In February 2017 and each February thereafter, the base monthly and hourly fees will increase by the percentage increase in the Producer Price Index – Legal Services, during the preceding year.</p> <p>The contract defines the scope of services included under the flat fee arrangement. Services on a matter involving extensive or intense legal work that both parties agree falls outside of the scope of general legal services are to be billed at the then current hourly rate.</p>
Policy	The City Attorney is appointed by and serves at the pleasure of the Council. The Council determines the City Attorney’s compensation.
Fiscal Impact	The flat fee would be \$144,000 per year through January 2017. Additional legal services are to be billed at \$175 per hour. Beginning in February 2017, automatic annual fee increases take effect, based on the percentage increase in the PPI-Legal Services during the preceding year.
Attachments	Ordinance Contract for General Municipal Legal Services (City Attorney)
Recommendation	Adopt the single reading ordinance.
Special Consideration	

Introduced by:

Single Reading

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE 2015-

**AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR MUNICIPAL
LEGAL SERVICES (CITY ATTORNEY)**

WHEREAS, the City of Takoma Park issued a request for proposals for municipal legal services (City Attorney) in September 2014; and

WHEREAS, after evaluation of the proposals received and interviews with two firms, the City Council determined that the City will be best served by continuing its relationship with the firm of Silber, Perlman, Sigman & Tilev, P.A.; and

WHEREAS, a contract has been prepared that sets forth the scope of work, the contract term, the arrangement for fees and expenses, and other agreed upon terms; and

WHEREAS, the term of the contract will be five years, with the option for renewal for up to five additional one-year extension terms; and

WHEREAS, a copy of the proposed contract is attached to this ordinance and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT:

SECTION 1. The law firm of Silber, Perlman, Sigman & Tilev, P.A. is appointed by the Council to serve as City Attorney for the City of Takoma Park.

SECTION 2. The Mayor is authorized to execute a Contract for Legal Services (City Attorney) with the law firm of Silber, Perlman, Sigman & Tilev, P.A. on substantially the terms and conditions set forth on the attached Contract. The Contract for Legal Services (City Attorney) shall be for a five-year term, with the option for renewal for up to five additional one-year extension terms.

SECTION 3. This Ordinance shall become effective upon adoption.

THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS _____, 2015 BY ROLL-CALL VOTE AS FOLLOWS:

AYE:

NAY:

ABSTAIN:

ABSENT:

CONTRACT FOR LEGAL SERVICES (CITY ATTORNEY)

City of Takoma Park, Maryland, and Silber, Perlman, Sigman & Tilev, P.A.

THIS AGREEMENT is made by and between the City of Takoma Park, Maryland (“City”), a municipal corporation, 7500 Maple Avenue, Takoma Park, Maryland 20912, and the law firm of Silber, Perlman, Sigman & Tilev, P.A. (“City Attorney”), 7000 Carroll Avenue, Suite 200, Takoma Park, Maryland 20912-4437, collectively referred to as “the Parties.”

I. Scope of Services.

A. Legal Services. The City Attorney agrees to perform legal services for the City, and the City agrees that it will refer all of its legal work to City Attorney, except labor and employment matters and any other matters the Parties agree shall be handled by other counsel. This includes, but is not limited to, the legal services set forth in the Scope of Services section of the RFP and/or other or additional services as requested by the City and subject to the budgetary constraints of the City.

B. Professional Activities, Training, and Team Building.

1. Training and Professional Development. The City Attorney may be included in City staff training, City Council retreats, and similar programs.

2. Conferences, Membership Fees. The parties recognize and acknowledge that to be effective, City Attorney needs to attend and/or join certain municipality-related professional activities, educational programs, and organizations. Participation will be at the discretion of City Attorney and attendance and/or membership fees for such activities, education programs, and/or organizations shall be paid by the City when the City deems City Attorney’s participation to be in its best interests. For example, the City agrees to pay City Attorney’s expenses to attend the Maryland Municipal League (“MML”) Annual Convention, the MML Legislative Conference, and one annual conference of the International Municipal Lawyers Association (“IMLA”). The City may agree to pay for similar conferences that would enhance the City Attorney’s knowledge about legal matters relevant to the City (for example, the National League of Cities). The City agrees to pay for such membership dues as agreed by the Parties, including, but not limited to, the IMLA and the MML Maryland Municipal Attorneys’ Association (“MMAA”).

II. Contract Documents.

The Contract Documents consist of this Contract; the City of Takoma Park’s Request for Proposals (“RFP”); #ADM-2014-09-03, Contract for Services General Municipal Legal Services (City Attorney), issued September 3, 2014; the Proposal of Silber, Perlman, Sigman & Tilev, P.A., dated October 3, 2014, and Response to Supplemental Questions dated October 27, 2014, submitted in response to the City’s RFP; City of Takoma Park, Maryland, Certification of Non-Involvement in the Nuclear Weapons Industry; City of Takoma Park, Maryland, Living Wage Requirements Certification, and all of the attachments and exhibits thereto. All of these documents (the “Contract Documents”) form the Contract and are a part of this Contract as if attached hereto or fully repeated herein.

III. **Term of Contract.**

A. The term of this Contract is for five (5) years, effective on February 1, 2015. By agreement of the Parties, this Contract may be renewed for up to five additional one-year-extension terms following the expiration of the initial contract term.

B. This Contract replaces the contract for City Attorney's services made as of December 1, 2013, between the City of Takoma Park, Maryland, and the City Attorney.

IV. **Attorney's Fees and Expenses.**

A. **Base Monthly Flat Fee ("Flat Fee").** Unless agreed otherwise in accordance with paragraph (F)(2) of this section, the City agrees to pay the City Attorney a Flat Fee of \$12,000.00 per month from February 2015 through January 2017, for general legal services matters as described in section I. of this Contract, and for services described in paragraph (D) of this section IV.

B. **Base Hourly Fee ("Hourly Fee").** The City agrees to pay the City Attorney for hourly matters, (as described in and agreed to in accordance with paragraph (E) of this section IV), at a rate of \$175.00 per hour from February 2015 through January 2017.

C. **Fee Escalation.** In February 2017, and each February thereafter, the City Attorney's then-current monthly Flat Fee and Hourly Fee rates will increase by the percentage increase in the Producer Price Index - Legal Services (Series 5411) published by the U.S. Bureau of Labor Statistics ("PPI-LS"), during the preceding year (calculated by comparing the January PPI-LS immediately preceding the increase to the previous January's PPI-LS).

D. **Scope of Services Covered under Flat Fee.** The Flat Fee is in exchange for the City's full access to the City Attorney's time, advice, and consultation regarding the routine and day-to-day legal issues and matters that the City may encounter, except labor and employment legal services, and shall be known as "General Counsel Matters." General Counsel Matters shall include, but not be limited to, contract review and drafting, legislative drafting and assistance to staff in drafting ordinances and resolutions, advice regarding the administration of City laws, problem solving, litigation prevention and negotiation, advising the Ethics, Tree, and Landlord-Tenant Commissions, defending judicial appeals of Commission decisions before the Circuit Court for Montgomery County, prosecution of municipal infraction citations, defense against subpoenas of City records and officials, uncontested forfeiture actions, and the like. The question of whether a matter or issue falls within the scope of General Counsel Matters will be handled with common sense, mutual agreement, mutual respect, and fairness to both parties, and with due regard to past precedent and practice.

1. **Legal requests.** The Parties will continue to utilize the existing or mutually revised Legal Request system and forms to designate new legal work assignments, except that the Legal Request will be initialed by the City Manager and City Attorney when they have agreed to designate the matter as an hourly matter, per paragraph E of this section IV.

2. **Requests from individual Councilmembers.** The Parties agree to continue the practice of the City Attorney providing up to one hour of attorney time for inquiries from individual Councilmembers or the Mayor, without approval by the City Council or City Manager. The frequency of such inquiries under the Flat Fee arrangement should be up to twelve per year.

3. **Non-legal work.** The Parties agree that non-legal work, except for minor tasks incidental to the provision of legal services, is beyond the scope of this Contract. If the City Attorney determines that a matter or specific task assigned by City staff to the City Attorney is non-legal in nature, the City Attorney may refer the matter or task back to City staff. Disagreements about the legal nature of a matter or task will be discussed between the City Attorney and City staff at the lowest reasonable staff level but, if necessary, will be resolved between the City Manager and the City Attorney.

E. **Hourly Fees for Extraordinary Services Outside the Scope of General Counsel Matters.** If the City requires services on a matter involving extensive or intense legal work that Parties agree falls outside of the scope of General Counsel Matters, the City Attorney will handle such services on an hourly basis at the then-current hourly rate as established in accordance with paragraphs (B) and (C) of this section IV (“Hourly Matters”). Examples of hourly matters include, but are not limited to, complex administrative proceedings (and associated negotiations) such as the Washington Adventist Hospital Certificate of Need application, WMATA’s consideration of the redevelopment of the Takoma Metro station, court litigation matters (except those specifically included above as General Counsel Matters), and significant legislative projects such as those similar in scope to the comprehensive amendment of the Housing Title of the City Code in 2013.

F. **Billing Statements, Records of Attorney Time, Modification of Fee Terms, and Payment.**

1. **Billing Statements.** The City Attorney will provide the City with a monthly statement that reports on the time spent and describes the work performed on Hourly Matters, invoices the then-current monthly Flat Fee, and invoices all additional charges for reasonable out of pocket expenses such as shipping, courier, copying, legal research, travel to court and meetings outside of the City, dues, and the like (hereinafter “disbursements”). The City Attorney will maintain a record of the time spent and description of the work performed on General Counsel Matters, which will be provided to the City upon request and prior to any discussion regarding an adjustment to the financial arrangement between the City and the City Attorney pursuant to paragraph (F)(2) of this section IV. Because the purposes of the recording of time for General Counsel Matters are to allow the Parties to assess the reasonableness of the Flat Fee arrangement, and because one of the benefits of the Flat Fee is to reduce the administrative burden of producing and reviewing hourly bills each month, the City understands and agrees that the City Attorney will not proof read or edit its records of such work.

2. **Modification of Fee Terms After One Year.** In February 2016, and annually thereafter, either the City or the City Attorney may propose to modify the fee provisions of this Contract. The Parties agree to review the amount of actual time expended and future expectations and discuss whether an adjustment is appropriate prospectively to ensure the fee arrangement is reasonable and fair for both parties. The Parties agree that their mutual goal and

assumption is that they will continue under a Flat-Fee arrangement for General Counsel Matters for the remaining four years of the Contract term.

3. **Payment of Fees.** Payment of the preceding month's monthly Flat Fee is due on or before the fifth day of each month. Payment of fees for hourly matters and reimbursement for disbursements is due within 30 days of the date of the invoice.

V. Notices.

Any required notices or other communications under this Contract shall be in writing and personally delivered or mailed or delivered by a reputable overnight delivery service. Notice via email may be considered official notice if the receiving party acknowledges receipt in writing via return email or via an email delivery receipt.

If to City Attorney: Susan Silber
Silber, Perlman, Sigman & Tilev, P.A.
7000 Carroll Avenue
Takoma Park, MD 20912
Phone: (301) 891-2200
Email: Silber@sp-law.com

If to the City: City Manager
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912
Phone: (301) 891-7100
Email: TBD

or to such other person, address, or e-mail as either party shall have designated by a notice in writing to the other. Any such notice shall be deemed given when personally delivered or one business day after the notice is given by any of the other delivery methods set forth above.

VI. Insurance.

The City Attorney agrees to obtain, at its own cost and keep in force and effect during the term of this Contract, including any extensions and renewals, the insurance specified below with an insurance company licensed or qualified to do business in the State of Maryland. At the request of the City, the City Attorney shall furnish a Certificate of Insurance indicating that the required insurance coverages are in force. The required insurance coverages are as follows:

<u>Coverage</u>	<u>Liability Limits</u>
Workers Compensation, Bodily Injury by	
Accident (each)	\$100,000.00
Disease (policy limits)	\$500,000.00
Disease (each employee)	\$100,000.00
Commercial General Liability	\$1,000,000.00

(Minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors.)

Professional Liability Insurance \$1,000,000.00
(For errors, omissions, and negligent acts, per claim and aggregated, with a one year discovery period and maximum deductible of \$25,000.00.)

Automobile Liability Insurance is waived for this Contract.

VII. Contract Termination.

Subject to the City Attorney's ethical obligations under the Maryland Lawyers' Rules of Professional Conduct, and subject to legal restrictions upon the withdrawal of counsel from litigation matters, the City Attorney or the City, by and through the City Council, may terminate this Contract. If the City terminates the Contract and the fees the City would have owed to the City Attorney for General Counsel Matters for the preceding twelve months had they been billed at the City Attorney's hourly rate exceed the Flat Fees paid during the preceding twelve months, the City shall pay the City Attorney the difference between the Flat Fees paid and the cost of the City Attorney's General Counsel services if billed at its hourly rate for that period. The parties will endeavor to notify each other of concerns arising under this Contract and meet and confer with each other before terminating this Contract and to provide at least six months' written notice prior to termination. In addition, the City Attorney will endeavor to provide at least six months notice if Susan Silber plans to retire; both parties acknowledge this will not be grounds for termination of the Contract.

VIII. Miscellaneous.

A. It is understood that this Contract does not create an employment relationship and that the City Attorney has an independent private law practice. There are no restrictions on the City Attorney's private practice of law, other than all applicable professional responsibility prohibitions against conflicts of interest.

B. This Contract shall be governed by and interpreted in accordance with the laws of the State of Maryland.

C. The foregoing provisions constitute the complete agreement between the Parties with respect to the subject matter of this Contract. No modification, waiver, or amendment of any of the terms of this Contract shall be effective unless it is in writing and signed by both parties. This Contract shall be binding upon the Parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have set their hands and seals to this Contract effective on the 1st day of February, 2015.

SILBER, PERLMAN, SIGMAN & TILEV, P.A.

Witness

By: _____ (SEAL)
Susan Silber, City Attorney

Date signed: _____

CITY OF TAKOMA PARK, MARYLAND

Witness

By: _____ (SEAL)
Suzanne Ludlow, Acting City Manager

Date signed: _____